

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MARY L. REYNOLDS,)	No. 04-CV-3124-AAM
)	
Plaintiff,)	ORDER DENYING PLAINTIFF'S
)	MOTION FOR SUMMARY JUDGMENT
v.)	AND GRANTING DEFENDANT'S
)	MOTION FOR SUMMARY JUDGMENT,
JO ANNE B. BARNHART,)	<i>INTER ALIA</i>
Commissioner of Social)	
Security,)	
)	
Defendants.)	
)	

BEFORE THE COURT are cross motions for Summary Judgment. (Ct. Rec. 12, 14). Attorney D. James Tree represents the Plaintiff; Assistant United States Attorney Pamela Derusha and Special Assistant United States Attorney Joanne Dantonio represent the Defendant. After reviewing the administrative record and briefs filed by the parties, the court **DENIES** Plaintiff's motion for summary judgment and **GRANTS** Defendant's motion for summary judgment.

I. JURISDICTION

Mary L. Reynolds(Plaintiff) protectively filed for Supplemental Security Income on April 16, 1996. (Tr. 125.) She alleged disability due to back, spine, neck and wrist pain, with an onset date of September 1, 1994. (Tr. 129.) Her application was denied initially and upon reconsideration. (Tr. 114, 120.) She timely requested a hearing before an administrative law judge

1 (ALJ), which was held on September 29, 1997. (Tr. 123, 515.) The
2 ALJ denied her application; however, the Appeals Council remanded
3 the case for further proceedings. (Tr. 334.) A supplemental
4 hearing was scheduled, Plaintiff failed to appear, and a dismissal
5 was entered. (Tr. 362.) The Appeals Counsel reversed the
6 dismissal and remanded the matter for completion of the record and
7 a new hearing. (Tr. 367.)

8 Another supplemental hearing was held on December 3, 2002,
9 before ALJ Verrell Dethloff. (Tr. 478-509.) Plaintiff appeared
10 and was represented by counsel. ALJ Dethloff denied Plaintiff's
11 claim for benefits on May 19, 2003. (Tr. 29.) The Appeals
12 Council denied review, making the ALJ's decision the final
13 decision of the Commissioner. (Tr. 12-14.) The instant matter
14 is before the district court pursuant to 42 U.S.C. § 405(g).

15 II. SEQUENTIAL EVALUATION

16 The Social Security Act defines "disability" as the
17 "inability to engage in any substantial gainful activity by reason
18 of any medically determinable physical or mental impairment which
19 can be expected to result in death or which has lasted or can be
20 expected to last for a continuous period of not less than 12
21 months." 42 U.S.C. § 423(d)(1)(A). The Commissioner is governed
22 by a five-step sequential evaluation process for determining
23 whether a plaintiff is disabled. 20 C.F.R. § 404.1520, 416.920. ¹

24
25 ¹ Certain sections of 20 C.F.R. addressing Title II and Title
26 XVI benefits have been amended. 68 F.R. 51153. The amendments
27 are applicable to administrative decisions dated on or after
28 September 25, 2003. 68 F.R. 51159. Accordingly, the amendments
are not applicable here. Any reference to C.F.R. sections in this
opinion is pre-amendment.

1 In steps one through four, a claimant must demonstrate a severe
2 impairment and an inability to perform past work. *Erickson v.*
3 *Shalala*, 9 F.3d 813 (1993). If a claimant meets those
4 requirements, the burden shifts to the Commissioner to demonstrate
5 a claimant can engage in other types of substantial gainful work
6 which exist in the national economy. *Erickson* at 817 (citing
7 *Gallant v. Heckler*, 753 F.2d 1450, 1452 (9th Cir. 1984)). To make
8 this determination, the Commissioner must consider a claimant's
9 age, education and work experience. 20 C.F.R. § 404.1520(f). See
10 *Bowen v. Yuckert*, 482 U.S. 137 (1987).

11 III. STANDARD OF REVIEW

12 In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001)
13 the court set out the standard of review:

14 A district court's order upholding the
15 Commissioner's denial of benefits is reviewed de novo.
16 *Harman v. Apfel*, 211 F.3d 1172, 1174 (9th Cir. 2000).
17 The decision of the Commissioner may be reversed only if
18 it is not supported by substantial evidence or if it is
19 based on legal error. *Tackett v. Apfel*, 180 F.3d 1094,
20 1097 (9th Cir. 1999). Substantial evidence is defined as
21 being more than a mere scintilla, but less than a
22 preponderance. *Id.* at 1098. Put another way, substantial
23 evidence is such relevant evidence as a reasonable mind
24 might accept as adequate to support a conclusion.
25 *Richardson v. Perales*, 402 U.S. 389, 401 (1971). If the
26 evidence is susceptible to more than one rational
27 interpretation, the court may not substitute its
28 judgment for that of the Commissioner. *Tackett*, 180 F.3d
at 1097; *Morgan v. Commissioner of Social Sec. Admin.*,
169 F.3d 595, 599 (9th Cir. 1999).

The ALJ is responsible for determining credibility,
resolving conflicts in medical testimony, and resolving
ambiguities. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th
Cir. 1995). The ALJ's determinations of law are
reviewed de novo, although deference is owed to a
reasonable construction of the applicable statutes.
McNatt v. Apfel, 201 F.3d 1084, 1087 (9th Cir. 2000).

26 IV. STATEMENT OF THE CASE

27 Plaintiff was 50 years old at the time of the hearing, with
28

1 an 11th grade education. (Tr. 487.) She has worked as a nurse's
2 aide and a fruit sorter. (Tr. 137.) Plaintiff had a twenty year
3 history of drug and alcohol abuse. (Tr. 94.) She testified that
4 she quit using cocaine in 2000. (Tr. 488.) She smoked from one
5 to two packs of cigarettes a day over the years. (Tr. 535.) At
6 the 1997 hearing, she testified she used an inhaler occasionally,
7 but did not take prescription drugs. (Tr. 529, 535.) At the time
8 of the 2002 hearing she was taking albuterol and medication for
9 her stomach and back problems, but was no longer taking Tylenol.
10 (Tr. 486.) She testified she had decreased her smoking to three
11 times per day. (Tr. 488.)

12 Plaintiff is right-hand dominant. In May 1993, she fell and
13 injured her left wrist. Surgery was required to repair the left
14 distal radius fracture. (Tr. 166.) She testified she cannot do
15 heavy lifting with her left wrist and it bothered her once or
16 twice a week. She stated her wrist hurts when bent. (Tr. 495,
17 526.) She stated she does some housework, shops, and cooks. (Tr.
18 484-85.) In 1997, she testified she could walk only 10 to 15
19 minutes at a time, could not lift more than 5 pounds and could not
20 stand or sit for more than 10 to 15 minutes at a time. (Tr. 524,
21 528.) In 2002, she testified her legs went numb after standing for
22 one half hour. (Tr. 492.)

23 V. ADMINISTRATIVE DECISION

24 The ALJ applied the five-step sequential evaluation process
25 for determining whether Plaintiff is disabled. At step one, he
26 found she had not engaged in substantial gainful activity since
27 her alleged disability onset date; at step two he found she had
28 the severe impairment of status post left wrist fracture; at step

1 three, he found the impairment did not meet or equal the
2 requirements of a listed impairment. (Tr. 28) At step four he
3 determined she had the residual functional capacity to perform
4 light work and could perform her past relevant work as a fruit
5 sorter. (Tr. 27.) In the alternative, he found a more limited
6 residual functional capacity of light work with occasional use of
7 the left non-dominant hand and arm with a non-exertional
8 limitation in her ability to lift more than ten pounds with her
9 left arm. (Tr. 28, 29.) The ALJ proceeded to step five. Based on
10 testimony of the vocational expert, he found Plaintiff able to
11 perform other work in the national economy (such as recreation
12 aide and area checker) and, therefore, not disabled as defined by
13 the Social Security Act. (Tr. 28, 29.)

14 VI. ISSUES

15 The question presented is whether there was substantial
16 evidence to support the ALJ's decision and whether the decision
17 was based on proper legal standards. Plaintiff asserts the ALJ
18 erred when he (1) improperly rejected her physicians' opinions;
19 (2) conducted an inadequate step four analysis; and (3) presented
20 an incomplete hypothetical to the vocational expert. (Ct. Rec.
21 13, p. 11).

22 VII. DISCUSSION

23 A. Rejection of Physicians' Opinions

24 Plaintiff argues the ALJ did not give adequate reasons for
25 rejecting treating physician Shirley Mauch's opinion that she was
26 severely limited and unable to perform more than sedentary work.
27 (Ct. Rec. 13, p. 14). Defendant responds the ALJ provided
28 substantial reasons to reject Dr. Mauch's opinions, which were

1 contradicted by examining medical sources and based on Plaintiff's
2 unreliable subjective complaints. (Ct. Rec. 18, p. 8).

3 In a disability proceeding, a treating physician's opinion is
4 given more weight than that of an examining or non-examining
5 physician. *Benecke v. Barnhart*, 379 F.3d 587, 592 (9th Cir.
6 2004); *Holohan v. Massanari*, 246 F.3d 1195, 1202 (9th Cir. 2001)
7 (quoting *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998));
8 *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995); *Smolen v.*
9 *Chater*, 80 F.3d 1273, 1285-88 (9th Cir. 1996); *Flaten v. Secretary*
10 *of Health and Human Serv.*, 44 F.3d 1453, 1463 (9th Cir. 1995);
11 *Fair v. Bowen*, 885 F.2d 597, 604-05 (9th Cir. 1989). If a
12 treating physician's opinions are not contradicted, they can be
13 rejected only with "clear and convincing" reasons. *Lester*, 81
14 F.3d at 830. If contradicted, the ALJ may reject the opinion if
15 specific, legitimate reasons that are supported by substantial
16 evidence are given. See *Flaten*, 44 F.3d at 1463; *Fair*, 885 F.2d at
17 605. To meet this burden, the ALJ can set out a detailed and
18 thorough summary of the facts and conflicting clinical evidence,
19 state his or her interpretation of the evidence, and make
20 findings. *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002)
21 (citing *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989)).

22 Historically, courts have recognized internal
23 inconsistencies, conflicting medical evidence, the absence of
24 regular medical treatment during the alleged period of disability,
25 and the lack of medical support for doctors' reports based
26 substantially on a claimant's subjective complaints as specific,
27 legitimate reasons for disregarding an examining physician's
28 opinion. *Thomas*, 278 F. 3d at 957; see also *Flaten*, 44 F.3d at

1 1463-64; *Fair*, 885 F.2d at 605. Further, the more consistent an
2 opinion is with the record as a whole, the more weight is given to
3 that opinion. 20 C.F.R. § 404.1527(d)(4). The ALJ does not need
4 to accept the opinion of any medical source if it is conclusory,
5 brief or unsupported by findings. *Matney on Behalf of Matney v.*
6 *Sullivan*, 981 F.2d 1016, 1019 (9th Cir. 1992). Although
7 deference is given to a treating physician's opinion, the
8 determination of whether an impairment meets or equals a listing
9 and the ultimate determination of disability are findings reserved
10 solely for the Commissioner. *Tonapetyan v. Halter*, 242 F. 3d
11 1144, 1148 (9th Cir. 2001); *SSR 96-5p*.

12 Here, records from Dr. Mauch include Department of Social and
13 Health Services (DSHS) physical evaluation forms and treatment
14 notes. The DSHS forms are from 1997 through 2001 and indicate
15 Plaintiff is limited to sedentary work. (Tr. 266-269, 410-24.)
16 The diagnoses over the years included degenerative joint disease
17 (spine), reflux disease (GERD), numbness of hands, left wrist
18 trauma and pain, low back pain, asthma, abdomen pain, left arm
19 pain and numbness and hepatitis C. Severity ratings for each
20 diagnosis varied from moderate to marked, depending upon the date
21 of the evaluation. Dr. Mauch rated Plaintiff's abdominal pain a
22 "severe" impairment in 1998. In 1996 and 1997, she rated
23 Plaintiff's abdominal pain, lower back pain and asthma as "severe"
24 impairments. (*Id.*)

25 The ALJ summarized the medical evidence, including reports
26 and notes submitted from Plaintiff's examining physicians, some of
27 whom were specialists referred by Dr. Mauch. (Tr. 23.) He found
28 no clinical evidence of carpal tunnel syndrome or GERD that

1 equaled a severe impairment. (*Id.*) He also found that although
2 Plaintiff continued to smoke up to one pack per day against
3 medical advice, clinical pulmonary testing revealed only mild
4 obstruction. (Tr. 23, 293.)

5 The ALJ specifically rejected Dr. Mauch's assessment of the
6 severity of Plaintiff's impairments and her conclusion that
7 Plaintiff was restricted to sedentary work level, stating Dr.
8 Mauch's clinical notes revealed examinations that "have been
9 largely benign." (Tr. 23.) He stated: "Dr. Mauch consistently
10 noted that claimant had no neurological deficit." He found that
11 Plaintiff had presented "at numerous examinations in no apparent
12 distress." (Tr. 24.) He further cited to clinical findings that
13 Plaintiff's liver problems improved after she stopped drinking,
14 that her bone density examination in 2003 revealed moderate
15 osteoporosis that did not cause significant vocational or daily
16 activity restrictions. (Tr. 24, 25.) He noted that the record
17 did not include evidence of "significant motor loss, muscle
18 weakness or sensory or reflex loss." (Tr. 26.) These are specific
19 and legitimate reasons to discount Dr. Mauch's assessment that
20 Plaintiff was severely impaired.²

21 The ALJ's findings are amply supported by the record.
22 Specifically, Dr. Mauch's clinical notes do not include reference
23 to severe limitations in Plaintiff's functioning during visits.
24 (Tr. 376-92.) Dr. Mauch noted asthma as level 5 ("severe") once
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26 ² The ALJ also found Dr. Mauch had relied upon Plaintiff's
27 subjective statements, which were found not credible. The ALJ's
28 credibility finding has not been challenged and is supported by
substantial evidence. (Tr. 25.)

1 in November 1996, but did not refer to this condition in the
2 following years. (Tr. 268.) Further, as stated by the ALJ, Dr.
3 Mauch's clinical notes for November 1996 indicate "no apparent
4 distress"; "Lungs are clear to auscultation." (Tr. 24, 284, 285.)
5 The ALJ noted that Plaintiff had no medical treatment for her
6 lower back pain over the ten years it has allegedly been a
7 problem, or for current wrist pain. (Tr. 24, 465.) The record
8 also shows Plaintiff frequently failed to show for her
9 appointments with Dr. Mauch. (Tr. 378, 383, 388, 450.) A failure
10 to follow up with medical treatment for an alleged impairment is
11 inconsistent with Plaintiff's alleged degree of pain. *See Fair*,
12 885 F.2d at 604.

13 Plaintiff argues that the ALJ erred in finding Dr. Mauch's
14 opinions were unsupported by medical evidence and based only on
15 Plaintiff's self report. (Ct. Rec. 13, p. 13). She asserts that
16 even though Dr. Mauch's records do not include the objective
17 evidence of severe limitations, Dr. Mauch relied upon reports from
18 specialists to whom she referred Plaintiff. (*Id.*) This argument
19 fails. At the 1997 hearing, Plaintiff testified she was not happy
20 with Dr. Mauch services, and that Dr. Mauch primarily asked her
21 how she been, how she was feeling and what kind of pain medication
22 she wanted. (Tr. 522.) As mentioned above, clinical testing did
23 not reveal serious pulmonary problems, digestive tract problems,
24 or degeneration of the spine requiring medical treatment. (Tr.
25 222, 224, 275.) The record does not show any surgical
26 intervention for these alleged impairments either. Dr. Cooke, who
27 diagnosed carpal tunnel syndrome, also opined Plaintiff was
28 capable of "light" work. His two page report included no range of

1 motion testing or imaging to support his opinion. (Tr. 373.) The
2 ALJ rejected Dr. Cooke's diagnosis as brief and conclusory "with
3 little objective support." (Tr. 23.) The ALJ's reasoning is
4 supported by substantial evidence in the record.

5 Reports from examining and reviewing physicians support the
6 ALJ's rejection of Dr. Mauch's findings. In January 2003, James
7 Damon, M.D. examined Plaintiff and found low back pain without
8 significant objective findings, asthma by history and status post
9 left wrist fracture, with no significant residuals. (Tr. 465-66.)
10 Plaintiff told him she was being treated for asthma with Claritin
11 and albuterol, but was still smoking one pack of cigarettes a day.
12 (Tr. 465.) Dr. Damon assessed Plaintiff's grip strength as normal
13 bilaterally; she could operate buttons and zipper satisfactorily
14 and pick up coins from the table. He opined she had no functional
15 exertional restrictions, and was limited to occasional climbing,
16 balancing, kneeling, crouching, crawling, and stooping, but was
17 capable of light work. (Tr. 466, 468.) The ALJ accepted Dr.
18 Damon's conclusions regarding exertional restrictions as
19 consistent with his narrative and the findings of other DDS
20 physicians who examined Plaintiff in 1996. (Tr. 24, 26, 157-63,
21 219-21.) The ALJ specifically rejected Dr. Damon's limitation
22 regarding inhalants, finding a lack of substantial evidence of
23 pulmonary disease and Plaintiff's choice to continue smoking
24 against medical advice. (Tr. 27, 377.)

25 Viewing the record in its entirety, the ALJ's evaluation of
26 the evidence was reasonable and his findings are supported by
27 substantial evidence. The ALJ's rejection of Dr. Mauch's opinions
28 that Plaintiff had severe impairments and was restricted to

1 sedentary work is without legal error.

2 B. Step Four and Step Five

3 Based on the findings of Drs. Damon, Fuller and Rodkey, the
4 ALJ found Plaintiff capable of light work, including her past
5 relevant work as a fruit sorter. (Tr. 27.) Plaintiff argues her
6 work as a fruit sorter did not meet the criteria of "substantial
7 gainful activity," therefore, the ALJ's finding was error. She
8 also argues the ALJ did not make the findings required by SSR 82-
9 62 to support his determination she could perform past relevant
10 work. However, the ALJ went on to make step five findings that
11 Plaintiff could perform other work in the national economy;
12 therefore, any error at step four regarding Plaintiff's past
13 relevant work is "harmless error." See *Batson v. Commissioner of*
14 *Social Security Admin.*, 359 F.3d 1190,1197 (9th Cir. 2004) (*citing*
15 *Curry v. Sullivan*, 925 F.2d 1127, 1131 (9th Cir. 1990)(applying
16 the harmless error standard)).

17 At step five, the ALJ considered restrictions from
18 Plaintiff's wrist injury in assessing her ability to perform light
19 work. (Tr. 28.) His hypothetical to vocational expert William
20 Cagle included "an additional limitation to only occasional use of
21 the left, non-dominant hand and arm, lifting no more than 10
22 pounds with the left arm." (*Id.*; see also, Tr. 499.) Plaintiff
23 argues this was incomplete because it did not reflect her
24 restriction to sedentary work as opined by Dr. Mauch, and did not
25 include mental limitations included in the 1987 reports from Drs.
26 Utt and Thompson. (Ct. Rec. 13, p. 16); (See also Tr. 48-50, 92-
27 95, 103-05.) This argument is without merit. As discussed above,
28 the ALJ properly discounted Dr. Mauch's opinions regarding severe

1 impairments and sedentary work limits. Further, Plaintiff has not
2 alleged a disability due to mental impairments. (Tr. 129.) The
3 1987 reports do not indicate a condition that persisted more than
4 12 months, and subsequent medical reports (including those of
5 treating physician Dr. Mauch) make no mention of mental
6 impairments. Further, the record reflects Plaintiff worked as a
7 fruit sorter for various companies from 1988 through 1994. (Tr.
8 137.) The ALJ did not err at step five. Accordingly,

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10 **IT IS ORDERED:**

11 1. Plaintiff's Motion for Summary Judgment is **DENIED**.

12 2. Defendant's Motion for Summary Judgment is **GRANTED**.

13 3. Judgment for the **DEFENDANT** shall be entered. The District
14 Court Executive is directed to enter this Order, forward copies to
15 counsel, and thereafter shall close this file.

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17 **DATED** this 27th day of October 2005.

18
19 s/ Alan A. McDonald
20 ALAN A. McDONALD
21 SENIOR UNITED STATES DISTRICT JUDGE
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